

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

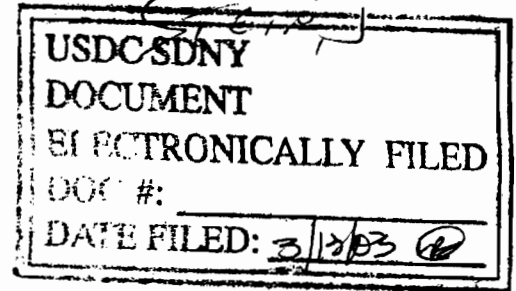
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WESLEY GABRIEL and SHAWN SMITH, individually
and on behalf of all others similarly situated,

Plaintiffs,

— against —

BRIAN FISCHER, in his capacity as Commissioner
of the New York State Department of Correctional
Services (DOCS), and in his individual capacity;
ANTHONY J. ANNUCCI, in his capacity as Deputy
Commissioner and Counsel for DOCS, and in his
individual capacity; LUCIEN J. LECLAIRE, JR., former
Acting Commissioner of DOCS, in his individual capacity;
GLENN S. GOORD, former Commissioner of DOCS,
in his individual capacity; and JOHN/JANE DOES 1-50
(DOCS Supervisory, Training, and Policy Personnel),

Defendants.
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08 Civ. 2460 (SHS)

**ORDER TO SHOW CAUSE
WITH TEMPORARY
RESTRAINING ORDER**

Upon reading the annexed Declaration of Wesley Gabriel, dated March 10, 2008,
the Declaration of Matthew D. Brinckerhoff, dated March 11, 2008, and all the exhibits annexed
thereto, the Complaint dated March 11, 2008, the accompanying Memorandum of Law in
Support of Plaintiffs' Request for a Preliminary Injunction and Temporary Restraining Order,
dated March 11, 2008, and all pleadings and proceedings relevant to this action, it is hereby:

ORDERED that defendants show cause before this Court in Room 23A, 500 Pearl

Street, New York, New York on April 18, 2008 at 9:30 o'clock in the

forenoon, or as soon thereafter as counsel can be heard, why an order should not be

issued:

1. preliminarily enjoining and directing defendants Brian Fisher and Anthony J. Annucci (respectively the Commissioner, and the Counsel and a Deputy Commissioner of New York State Department of Correctional Services ("DOCS")), their officers, directors, principals, agents, servants, employees, successors, assigns, and all those acting in concert or participation with them, to:

(A) vacate, withdraw and/or nullify (i) all terms and conditions of PRS imposed upon persons whose judicially imposed determinate sentence(s) did not include a term of PRS, but whom nevertheless have been, or will be, subjected to PRS after the maximum expiration date of their determinate sentence(s), and (ii) all outstanding arrest warrants predicated upon alleged violations of the terms or conditions of PRS by persons whose judicially imposed determinate sentence(s) did not include a term of PRS, and whose maximum determinate sentence(s) date has expired; and

(B) release from custody of all persons whose judicially imposed determinate sentence(s) did not include a term of PRS, but who nevertheless are being detained after the maximum expiration date of their determinate sentence(s) for allegedly violating the terms and conditions of PRS; and it is further

~~ORDERED, that pending the hearing and determination of plaintiff's motion for a preliminary injunction, defendants Fisher and Annucci shall vacate, withdraw and/or nullify (1) all terms and conditions of PRS imposed upon persons whose judicially imposed determinate sentence(s) did not include a term of PRS, but whom nevertheless have been, or will be, subjected to PRS after the maximum expiration date of their determinate sentence(s); and (2) all outstanding arrest warrants predicated upon alleged violations of the terms or conditions of PRS~~

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by persons whose judicially imposed determinate sentence(s) did not include a term of PRS, and whose maximum determinate sentence(s) date has expired; and it is further

ORDERED THAT
SECURITY IN THE AMT BFD BE POSTED BY
ORDERED that service of this Order and the papers upon which it is based be

made on or before the 13 day of March 2008, by delivering copies of such papers by hand to

Andrew M. Cuomo, Office of the Attorney General, 120 Broadway, New York, NY 10271, that

said service be deemed sufficient; and it is further

ORDERED that service of opposition papers, if any, be made on or before the 11th day of April, 2008 by delivering copies thereof by hand to the offices of Emery Celli

Brinckerhoff & Abady, LLP, 75 Rockefeller Plaza, 20th Floor, New York, New York, 10019,

attorneys for plaintiffs; and it is further

ORDERED that service of reply papers, if any, be made on or before the 18 day of April, 2008 by delivering copies thereof by hand to the offices of defendants' counsel.

SO ORDERED.


U.S.D.J.